IN THE COURT OF APPEALS OF IOWA

No. 3-769 / 13-0033
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL DAVID ROHM,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith, Judge.

Michael Rohm appeals from his drug-related convictions. **AFFIRMED.**

Lori J. Kieffer-Garrison, Davenport, for appellant.

Thomas J. Miller, Attorney General, Thomas J. Tauber, Assistant Attorney General, Michael J. Walton, County Attorney, and Joseph Grubisich and Will Ripley, Assistant County Attorneys, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

BOWER, J.

Michael Rohm appeals from his drug-related convictions, contending his trial attorney was ineffective and the court abused its discretion in imposing consecutive sentences. We affirm.

Rohm was charged with possession of a controlled substance with intent to deliver and failure to affix a drug tax stamp. His attorney filed a motion to suppress, challenging the search warrant. At the hearing on the motion, the attorney withdrew the motion, reserving the right to file it again later. The attorney also sought and obtained an extension of time for discovery. The attorney then sought and obtained permission to withdraw based on Rohm's failure to pay him. A new attorney was appointed. Pursuant to a written plea agreement, Rohm pled guilty to both counts.

At sentencing, Rohm made the court aware of numerous factual errors in the presentence investigation report. The report recommended incarceration. The State recommended incarceration. Rohm asked for probation. In the ensuing colloquy, the court mentioned Rohm's long criminal history, confirmed with Rohm that he minimized his drug problems, and noted the amount of drugs and cash seized indicated Rohm was "pretty heavily involved with the drug trade." The court then stated:

> Given those factors that I previously mentioned, the Court feels that a period of incarceration is warranted. And not only that, since you pled to two counts, the Court considers the fact that based on your criminal history and the facts and circumstances of this case, that consecutive sentences are also warranted.

The court imposed two indeterminate sentences of not more than five years and ordered them served consecutively.

We review a district court's sentencing decisions for an abuse of discretion. *State v. Barnes*, 791 N.W.2d 817, 827 (Iowa 2010). A district court's sentencing decision enjoys a strong presumption in its favor. *State v. Peters*, 525 N.W.2d 854, 859 (Iowa 1994). To overcome the presumption a defendant must affirmatively show the district court relied on improper factors. *See State v. Jose*, 636 N.W.2d 38, 41 (Iowa 2001).

Rohm asks, "[W]as an impermissible factor taken into consideration at the sentencing hearing by the court?" He points to the factual errors in the presentence investigation and asserts the court had reviewed his file and "it is unclear from the record what weight the court gave to the various errors" in the presentence investigation. The court expressly mentioned Rohm's long criminal history, confirmed with Rohm that he minimized his drug problems, and noted the amount of drugs and cash seized indicated Rohm was "pretty heavily involved with the drug trade." The court also considered that Rohm pled guilty to two counts. Based on these "facts and circumstances" the court imposed consecutive sentences. There is no indication in the record the court considered any improper factor. Rohm has failed to make the affirmative showing the court considered improper factors necessary to overcome the strong presumption in favor of the court's sentencing decision. *See id.* (specifically mentioning an improper factor when setting forth the reasons for a sentence). We affirm the district court's sentencing decision.

Rohm also contends his trial attorney was ineffective and he suffered prejudice. To succeed on an ineffective-assistance-of-counsel claim, a

defendant must show by a preponderance of the evidence "(1) counsel failed to perform an essential duty; and (2) prejudice resulted." *State v. Maxwell*, 743 N.W.2d 185, 195 (Iowa 2008). "We can affirm on appeal if either element is absent." *State v. McPhillips*, 580 N.W.2d 748, 754 (Iowa 1998). When complaining about the adequacy of an attorney's representation, it is not enough simply to claim counsel should have done a better job. *State v. White*, 337 N.W.2d 517, 519 (Iowa 1983). A defendant must state the specific ways in which the attorney's performance was inadequate and identify how competent representation probably would have changed the outcome. *See Schertz v. State*, 380 N.W.2d 404, 412 (Iowa 1985); *State v. Kendall*, 167 N.W.2d 909, 911 (Iowa 1969).

Rohm makes his entire claim in one sentence. He asserts his original trial attorney "was ineffective and caused him prejudice by withdrawing the motion to suppress and the motion for extension of discovery deadlines." Rohm's claim is too general in nature to allow us to address it or preserve it for possible postconviction relief proceedings. *See Dunbar v. State*, 515 N.W.2d 12, 15 (Iowa 1994); *Schertz*, 380 N.W.2d at 412. Rohm's ineffective-assistance claim fails.

AFFIRMED.